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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
TRADE POLICY STAFF COMMITTEE
Washington, D.C.

SECTION 203 INVESTIGATION)
OF STEEL)
)

**CARBON AND ALLOY STEEL FLANGES
(HTSUS 7307.21.10 AND 7307.21.50)
AND
STAINLESS STEEL FLANGES
(HTSUS 7307.91.50)**

**COMMENTS OF
THE ASSOCIATION OF EUROPEAN QUALITY FLANGE
MANUFACTURERS
IN RESPONSE TO DOMESTIC INDUSTRY VIEWS
ON PRESIDENTIAL ACTION UNDER SECTION 203**

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I. EXECUTIVE SUMMARY

The U.S. producers' recommendations to the President for action to be taken under Section 203 should be rejected. No import restrictive relief is justified or warranted with respect to carbon and alloy steel flanges or stainless steel flanges.

- **There is no injury to the domestic stainless steel flange industry.** In spite of statements by the domestic industry to the contrary, the International Trade Commission ("Commission") did not make an affirmative injury finding with respect to stainless steel flanges and fittings. To the contrary, the record indicates that this industry, which was profitable during every year of the period of investigation, is healthy. No relief for stainless flange producers is necessary and no relief should be granted.
- **The U.S. producers' requests for relief are based on myths.** The U.S. producers is using sleight-of-hand to convince the U.S. government that relief is warranted. They argue that imports of flanges undersold domestic flanges, even though no evidence of underselling by flanges is to be found in the record, and they argue that significant inventory overhangs and import surges required enhanced relief, even though evidence of neither is found in the record. Debunking these myths, the European Flange Manufacturers urge the Committee to refrain from recommending relief.
- **The arguments made by the U.S. producers are more appropriate to Title VII.** The U.S. producers' arguments center on allegations of injury caused by alleged "underselling" from certain countries. Moreover, the U.S. producers acknowledges that structural problems of the kind that led to this investigation – global overcapacity and legacy costs – do not exist in the flange industry. The U.S. producers' allegations more properly belong to Title VII, not Section 201, and the law requires the U.S. producers to seek relief under the appropriate statute.
- **The U.S. producers' adjustment plans offer no hope of recovery.** The U.S. producers' allegations of extreme underselling undermine its own arguments for adjustment. The U.S. producers offer no indication that they can cut costs enough to compete with foreign imports that are, according to the U.S. producers, currently priced below some domestic producers' costs of production. Section 203 relief is temporary, not permanent.

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ARGUMENT

The Association of European Quality Flange Manufacturers ("European Flange Manufacturers") welcomes this opportunity to provide the Trade Policy Staff Committee ("TPSC") with its views on the comments submitted by domestic producers on what action, if any, the President should take with respect to import relief for fittings and flanges.

The International Trade Commission ("ITC" or "Commission"), as an agency, has failed to reach an affirmative injury determination and has offered no Commission remedy with respect to stainless steel flanges and fittings (Product 33 -- HTSUS 7307.91.50). The facts simply do not support an injury finding nor was it possible to convince a majority of Commissioners that there is a causal link between the condition of the domestic industry and increased imports. In addition, the Committee should be mindful that the chief proponent of relief for flanges actually sells a large amount of product with no U.S. steel content and which cannot even lawfully be marked as "Made in USA." Finally, the ITC determination suffers from a number of serious flaws, from the incorrect definition of the domestic "like or directly competitive article" to the inappropriate attribution of underselling to flange imports in the absence of any supporting data. Under these circumstances, import restrictive relief for producers of stainless steel flanges is clearly unwarranted and would be ill-advised.

The Commission's recommendation of declining 13 percent tariffs for carbon and alloy steel flanges (Product 22 -- HTSUS 7307.21.10 and 730721.50) is also inappropriate and ill-advised. Flanges and fittings should never have been included in this investigation to begin with as they have nothing to do with the "steel industry" or the global "challenges" facing that industry. The Commission compounded this mistake by committing numerous and serious errors in its investigation, including the unwarranted grouping of flanges and fittings within the

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same like or directly competitive product grouping (over the objections of all parties to the proceeding and contrary to the facts), the failure to collect any pricing data for flanges while inappropriately attributing "underselling" for a certain type of butt-weld pipe fitting to flange imports, failure to address "unforeseen circumstances," and others. The ITC also incorrectly linked the deterioration in the condition of the participating US fittings and flange producers to imports, 1/ when the facts demonstrated to the contrary that –like the OCTG pipe industry for which the Commission reached negative determinations – these declines in performance were explained by the collapse of the oil and gas industry in 1999, and the industry exhibited a recovery thereafter. Finally, the core allegation by U.S. producers remains one of "price underselling" by imports, not massive import volumes. While the record contains data on butt-weld pipe fittings, the record in this case is, of course, devoid of any concrete supporting evidence of price underselling by flange imports. However, if the U.S. producers are capable of proving these price-related charges with respect to carbon and alloy steel flange imports, the appropriate and legally preferred avenue for relief is through the Title VII proceedings, not section 201.

In addition, contrary to claims by certain U.S. producers, there is not presently, nor has there been in the past, an "overhang" of imported flanges or fittings. Even using the figures presented by the ITC, importers' inventories as a percentage of apparent domestic consumption barely moved over the five year period of investigation. U.S. producers representations of absolute increases in importer inventories ignore the increase in consumption over the same period and create an illusion of "overhang." Moreover, because these arguments

1/ The single most important and leading U.S. producer, Ameri-Forge has steadfastly refused to participate in the investigation and so far has expressed no support for import relief for flange producers. The U.S. producers studiously ignore this critical fact.

were also presented to the ITC during the remedy phase, the Committee can safely assume that the Commission took the existence of these inventories into account in fashioning remedy recommendations that are many multiples below those now advanced by the domestic industry. Finally, the U.S. producers' speculation that subject import volumes may "surge" before the President takes action is simply that – speculation. No evidence of any kind has been presented of such a "surge" in flange or fitting imports since the Commission's injury determinations and to act on such unsubstantiated allegations would be wrong.

II. THERE IS NO INJURY TO STAINLESS STEEL FLANGE PRODUCERS

The International Trade Commission ("Commission") tied 3-3 on the issue of whether the domestic stainless steel fittings and flanges "industry" has actually suffered injury. Contrary to the assertions of the Committee on Pipe and Tube Imports ("CPTI"), this vote is not an affirmative finding. ^{2/} Indeed, the President would be very mistaken to treat it as such.

Perhaps it would assist the Committee to briefly review the reasons why three of the Commissioners voted in the negative. While all commissioners agreed that stainless steel flange and fitting import volumes "increased" in the relevant period, the commissioners voting in the negative recognized the following facts:

- **The industry is not in a state of impairment** -- "We find that the domestic stainless steel industry is not seriously injured; that is, we do not find a 'significant overall impairment in the position' of the domestic industry." ^{3/}
- **The industry gained market share** -- The industry saw an improvement in market share during the period of review; ^{4/}

^{2/} Comments on Presidential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Stainless Steel Fittings and Flanges ("Schagrin Stainless Comments"), Schagrin Associates, January 4, 2002, at 7.

^{3/} Steel, Inv. No. TA-201-73, Determinations and Views of Commissioners, at 258 (December 2001) ("Steel Determination").

- **The industry maintained profitability throughout the period --** ". . . the record indicates that the stainless steel fittings industry remained profitable throughout the period of investigation and was able to improve its operating income levels during the last eighteen months of the period, despite the fact that imports were at their highest levels during the period" [5/](#) . . . "Given these levels of operating profit, we conclude that the industry did not experience serious injury during the period, especially given the lack of a clear correlation between import volume trends and changes in the industry's condition" [6/](#)
- **The industry experienced no significant idling of facilities --** "The record does not indicate that there has been a significant idling of productive facilities in the domestic stainless steel fittings industry during the period of investigation . . . especially considering the industry's consistent operating profitability throughout the period." [7/](#)
- **Imports have had no serious impact on domestic prices --** ". . . stainless steel fitting imports appear not to have had a serious impact on the price of domestic stainless fittings during the period of investigation." [8/](#)
- **The industry has continued to make substantial investments --** ". . . the industry was able to continue making substantial investments in its operating facilities in the last three years of the period of investigation." [9/](#)
- **The commissioners could find no causal relationship between imports and the condition of the industry --** ". . . close examination of the record data fails to indicate that there is a clear correlation between trends in import quantities and the industry's financial condition or operating results." [10/](#) "Given the lack of correlation between import trends and domestic volume and price movements, we find it unlikely that imports will increase in such manner in the imminent future that they will be a substantial cause of serious injury to the domestic industry." [11/](#)

[4/](#) [Id.](#) at 260.

[5/](#) [Id.](#) at 260.

[6/](#) [Id.](#) at 259.

[7/](#) [Id.](#) at 258-59.

[8/](#) [Id.](#) at 261.

[9/](#) [Id.](#)

[10/](#) [Id.](#) at

[11/](#) [Id.](#) at 261.

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The allegations of "serious injury" currently being presented to the Committee by certain U.S. companies are completely unsustainable in light of these facts.

The U.S. companies seeking import restrictions are now grasping at straws to get the President to provide relief for a product category that clearly does not require it. In the process, these producers have made several erroneous and unsubstantiated claims to the Committee that require correction. For example, the Committee on Pipe and Tube Imports ("CPTI") asserts that the domestic industry was unable to "garner profits" during the period of investigation. ^{12/} This is wrong. As noted above, the record shows that the domestic industry was profitable during every period of the investigation. ^{13/} CPTI also asserts that there were "plant shutdowns" of stainless steel fittings and flange facilities, ^{14/} yet the record provides no evidence of a significant idling of productive facilities during the period of investigation. ^{15/} Similarly, despite claims by Gerlin Inc. (a machine shop operation producing foreign origin flanges) that imports have "depressed" U.S. prices for finished flanges, three of the Commissioners specifically concluded that "stainless steel fitting imports appear not to have had

^{12/} Id.

^{13/} This consistent profitability is especially noteworthy because, as Gerlin, Inc. ("Gerlin") points out, the increase in imports for stainless steel fittings and flanges was "among the largest for any of the product categories examined in this investigation." Comments of Gerlin, Inc. on Actions that the President Should Take Regarding Stainless Steel Flanges and Stainless Steel Flange Forgings ("Gerlin Comments"), Mayer, Brown & Platt, January 4, 2002, at 3. Yet in spite of this increase, the industry remained profitable, and only three Commissioners were willing to find serious injury. (Of course, two of those Commissioners found injury in all but a handful of the thirty-three product groupings, and the legitimacy of the status of one of the Commissioners – and hence the validity of his affirmative vote – has been judicially challenged.). See Nippon Steel Corp., et al. v. United States Int'l Trade Comm., Consol. Ct. No. 01-00103, Slip Op. 01-153 (Ct. Int'l Trade, Dec. 28, 2001).

^{14/} Schagrin Stainless Comments at 7.

^{15/} Steel Determination at 258-59.

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a serious impact on the price of domestic stainless fittings during the period of investigation." ^{16/}
This fact utterly undercuts Gerlin's demands for import restrictive relief. It also completely demolishes their overreaching insistence on import restrictions that are far above and beyond those recommended by any of the commissioners.

The Commission did not make an affirmative finding of serious injury for the stainless steel fittings and flange industries – and for good reason. However, even had the commission so ruled, the President would be ill-advised to take action to restrict imports on the record of this investigation given the very serious flaws in the ITC analysis. As noted previously, the Commission erred from the outset in defining the "like or directly competitive article" as including both flanges and fittings. That position has consistently been opposed by parties on both sides of the dispute. The Commission then compounded this error by collecting pricing data only for a particular type of butt-weld pipe fitting and attributing that data to flanges and other products included in Product group 33. All assertions to the contrary notwithstanding, there is no data on the record of the ITC's investigation concerning the prices of imported stainless flanges.

Finally, the Committee must take into consideration the nature of the companies that are asking for this extraordinary protection. The chief proponents of import restrictions on imports of finished flanges includes companies that import many of their steel requirements and only conduct minor machining operations in the United States. It is impossible to reconcile the objectives of this investigation of "steel" with a result whose benefits would accrue to companies that sell products with absolutely no U.S. steel content and whose operations in this country are so trivial that the U.S. Customs Service deems them insufficient to confer U.S. origin. That is

^{16/} Id. at 261.

not what this investigation is about and the Committee should not be misled into recommending to the President that he take action to implement such a bizarre and unjustified result.

III. U.S. PRODUCERS' CLAIMS FOR RELIEF ARE BASED MORE ON MYTH THAN REALITY

The European Flange Manufacturers likewise adamantly oppose any import restrictions on imports of carbon and alloy steel flanges. Although a commission majority has recommended additional 13 percent tariffs declining over four years, such restrictions even at those levels are not supportable for carbon and alloy steel flanges. As the European Flange Manufacturers have detailed, the record on which the Commission made this recommendation is fundamentally flawed and the Commission's affirmative determinations cannot withstand scrutiny under U.S. law or the WTO Safeguards Agreement. The Commission misidentified the "like or directly competitive article" by combining flanges and fittings. The Commission failed to collect pricing data on flanges. The Commission inappropriately ignored the fact that "converters" utilizing foreign steel do not even sell a U.S. product and ignored the fact that the leading U.S. carbon steel flange producer – Ameri-Forge refused to even participate in the investigation. The Commission failed to address the "unforeseen circumstances" at issue in this case. And, the Commission failed to demonstrate a causal link between subject imports and the condition of the domestic industry. The President would be very ill-advised to impose extraordinary import restrictions on carbon and alloy flanges on the basis of this kind of record.

Notwithstanding these facts, certain U.S. producers continue to clamor for import restrictions. Indeed, certain of these producers have sought to persuade this Committee to recommend import restrictions that go beyond any of those recommended by the individual commissioners. To be absolutely clear – the European Flange Manufacturers believe that any

imposition of import restrictions is unwarranted in this case. Nevertheless, to set the record straight, we address below certain myths advanced by U.S. companies attempting to justify even higher tariff levels on carbon steel flanges (and stainless steel flanges).

A. Myth 1: Flange Imports Have "Undersold" Domestic Producers

The domestic industry repeatedly asserts that flange imports have "undersold" domestic producers by "high margins" and that this supposed "fact" supports levels of tariff relief far beyond those recommended by the Commission. ^{17/} This is patently false. As the European Flange Manufacturers have documented, no underselling has been or can be established with respect to flanges, for the simple reason that the ITC never bothered to collect pricing data for flanges. As noted above, the ITC only collected pricing data for a particular type of butt-weld pipe fitting. As all parties agree, butt-weld pipe fittings are a different "like or directly competitive article" from flanges that are manufactured by a different set of producers and industry. It is inconceivable that any reviewing entity would accept as reasonable for the Commission to infer anything about the pricing of flange imports from data collected for butt-weld pipe fittings.

Therefore, the domestic industry's citation to the ITC staff report to argue that "weighted average prices of domestic stainless steel flanges and fittings fell 38.9% from 1996 to 2000" ^{18/} and, in the carbon and alloy context, that "underselling by non-NAFTA imports rose

^{17/} Schagrin Stainless Comments at 5; Gerlin Comments at 7; Comments of Boltex Manufacturing Co., L.P., National Flange and Fitting Co., Inc., and Weldbend Corporation on Actions that the President Should Take Regarding Carbon Steel Flanges, Carbon Steel Butt-Weld Pipe Fittings, and Carbon Steel Butt-Weld Pipe Fitting Forgings ("Boltex Comments"), Mayer, Brown & Platt, January 4, 2002, at 5.

^{18/} Schagrin Stainless Comments at 8.

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through the period to a margin of 25.8 percent below the domestic product" [19/](#) are irrelevant because they pertain exclusively to the butt-weld pipe fitting for which pricing data were collected.

The belated attempts by certain U.S. producers to overcome this deficiency in the record are weak. Gerlin, for example, has responded to this criticism by quoting a representative of its rival, Maass Forging Corporation, who stated at the ITC hearing that some imports of flanges undersold domestic flanges by margins of 40 percent. [20/](#) However, despite the European Flange Manufacturers' rejection of the underselling charge, and despite ample opportunity to do so, no actual evidence was ever offered to substantiate this claim. Furthermore, this claim was only made after the ITC staff had already published the underselling margin for the butt-weld pipe fitting; the Maass representative's claim for flanges was, curiously, almost the exact same amount. If the U.S. producers are seeking to justify 40 percent tariffs on alleged margins of underselling, it is not too much to ask that they furnish at least some hard evidence that it is occurring.

In short, the domestic industry is relying on a chimera of underselling that has simply never been established for flanges, either stainless steel or carbon and alloy. Their citations to the ITC staff report only further illustrate that no real evidence of underselling exists.

[19/](#) Boltex Comments at 5. The European Flange Manufacturers also note that in the carbon context, the Committee on Pipe and Tube Imports ("CPTI") requests duties that exceed the alleged margin of underselling found by the ITC, even though underselling was supposedly the basis for the remedy. Schagrin Carbon Comments at 1. Indeed, the CPTI undermines its request for relief in the fittings and flanges context. The CPTI notes that it is especially important to provide the highest recommended relief on welded pipe and tube because the price of the feedstocks for those products will increase due to relief that will ostensibly be granted under this investigation. Schagrin Carbon Comments at 24. However, the feedstock for flanges – billets – was eliminated from this investigation with the Commission's negative injury finding and will not be subject to relief. Under the CPTI's reasoning, then, flanges should be subject to less than the highest recommended relief.

[20/](#) Gerlin Comments at 9.

B. Myth 2: "Accumulated Import Inventories" Threaten Domestic Producers

Boltex Manufacturing, National Flange and Fitting, and Weldbend are seeking tariff measures at levels (40 percent) that are nearly three and a half times the levels actually recommended by the Commission (13 percent). These U.S. companies justify this overreaching in part with the argument that such exorbitant levels of tariff relief are necessary to counteract an "overhang" of "accumulated importer inventories." ^{21/} According to these companies "[t]he sale into the U.S. market of these importer inventories of flanges and fittings, which will not be subject to any tariff remedy, will perpetuate the suppression of U.S. producer prices and profits." ^{22/}

There is at least one fundamental flaw in this argument. ^{23/} There is no "overhang" of importer inventories. As a percentage of domestic consumption, importer inventories barely budged over the period of investigation. For carbon and alloy steel fittings and flanges, importer inventories at the beginning of the period when financial and operating indicators were at their highest, equaled 5.8 percent of apparent consumption. By 2000, this figure had increased only marginally to 7.0 percent. This is hardly a dramatic change or evidence of a massive accumulation of inventories. Inventory levels essentially kept pace with domestic consumption, as would be expected. ^{24/}

^{21/} Boltex Brief at 8.

^{22/} Id.

^{23/} The Association of European Quality Flange Manufacturers further note that it is their understanding that none of their members maintain inventories in the United States.

^{24/} The U.S. industry has sought to obscure these facts by focusing on the absolute increases in importer inventory levels without considering the concomitant growth in consumption over the same period. Moreover, comparing inventory levels to U.S. shipments is misleading inasmuch as a significant portion of the industry (e.g., Ameri-Forge) never participated in these proceedings.

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In short, as a factual matter, there is no "overhang" of imports.

Finally, the U.S. producers making these allegations fail to acknowledge that the same arguments were presented to the ITC during the remedy phase. Accordingly, it is reasonable to conclude that the Commission fully considered this evidence and these arguments in reaching its remedy determinations. It makes no sense to more than triple the Commission's remedy recommendations on the basis of evidence the Commission already took into consideration.

C. Myth 3: Flange Imports Have "Surged" Since the Commission's Affirmative Injury Vote

The claim that tariff relief should be inflated to counteract "import surges" since the Commission's October injury determinations is equally baseless and factually flawed. The Committee should note that the U.S. companies presenting these arguments have provided no statistical evidence of any kind to support this allegation. ^{25/} Claims that import surges are occurring therefore are entirely baseless and purely speculative. Again, given that his actions must be "appropriate," the President would be ill-advised to take action that is premised on pure supposition.

IV. U.S. PRODUCERS' COMMENTS CONFIRM THAT THIS INVESTIGATION MUST BE PURSUED – IF AT ALL -- UNDER TITLE VII, NOT SECTION 201

The core allegation that "some flange imports" are underselling domestic flanges again raises the question of whether the U.S. producers' claims are properly addressed by Section

^{25/} These companies merely point to past increases in import volumes and argue on that basis that the flange and butt-weld pipe fitting market "is extremely vulnerable to sudden surges of imports." Boltex Brief at 8-9.

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201, or whether they are in fact allegations of unfair trade practices that, by law, must be pursued through Title VII proceedings instead. [26/](#)

The argument presented by certain U.S. producers that flanges and fittings are not subject to global overcapacity or other structural problems endemic to the steel industry [27/](#) only confirms that flanges and fittings were not appropriately included in this investigation and, if injury due to imports is indeed a legitimate concern, should be subject to Title VII proceedings instead. Indeed, the domestic industry indicates how diametrically opposed the goals of the domestic steel industry and the converters are: Gerlin states that flange producers are "too small, and too isolated from the large flat steel and long steel producers, to benefit from foreign government agreements to reduce the capacity of their large steel makers." [28/](#) Indeed, why would Gerlin – or Boltex, or Weldbend – want foreign producers to eliminate subsidies or reduce capacity, when these same converters are direct beneficiaries of low-priced foreign steel? Their goals run entirely contrary to the original purpose of this investigation.

Moreover, Section 201 – and safeguards action generally – is designed to provide the domestic industry with temporary assistance if adjusting to the rigors of international trade proves too difficult. Thus, safeguards relief is in theory most appropriately pursued, for example, when a round of multilateral tariff reductions goes into effect, lowering tariff barriers and exposing domestic industries to increased competition. Likewise, structural problems, like overcapacity, can arise in global markets, rendering the domestic industry temporarily uncompetitive. The global nature of these problems makes them more difficult to resolve – and

[26/](#) 19 U.S.C. § 2252(c)(5); Report of the Committee on Ways and Means, House Report No. 93-571 (October 10, 1973), at 47.

[27/](#) Boltex Comments at 6-7; Gerlin Comments at 10-11.

[28/](#) Gerlin Comments at 10.

this is precisely why safeguards relief exists and must be globally applied. By conceding that there are no structural problems worthy of international negotiation, alleging that underselling is the cause of injury, and identifying specific countries as the source of the injury (Mexico in the stainless context and India in the carbon context) the domestic industry has made it clear that its complaints are appropriate to Title VII proceedings – i.e., antidumping proceedings -- not Section 201. Under the law, the Administration simply cannot grant relief under Section 203.

V. THE INDUSTRY'S ADJUSTMENT PLANS WILL NOT ENABLE THEM TO COMPETE WHEN RESTRICTIONS, IF IMPOSED, ARE LIFTED

The Section 201 statute is designed to provide temporary relief from import competition. As such, relief must be designed so that the domestic industry will be in a competitive position once relief is phased out. If no such relief is possible, then the industry's assets must be transferred to more "productive" pursuits. 29/

The burden is therefore on the domestic industry to demonstrate that its adjustment plans will enable it to compete once the restrictions are lifted. The steel flange producers that have chosen to participate in this proceeding have not met this burden. Most of the domestic industry's adjustment plans are confidential in nature, and we therefore cannot comment specifically on them. However, the European Flange Manufacturers strongly urge the TPSC to evaluate these adjustment plans in the context in which the domestic industry itself has placed them. The domestic industry has argued that underselling by some foreign producers is so egregious that prices are below domestic producers' costs of production. 30/ Because of these

29/ 19 U.S.C. § 2251(b)(1)(A)(ii).

30/ Schagrin Stainless Comments at 8; Comments on Presidential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Carbon and Alloy Welded Tubular Products and Carbon and Alloy Fittings and Flanges ("Schagrin Carbon Comments"), Schagrin Associates, January 4, 2002, at 16.

alleged – and unproven – margins, producers have even argued that no amount of tariff relief will suffice, [31/](#) or that tariff relief of 40% (very near the statutory maximum) is required. [32/](#)

In the context of a Section 201 investigation, the imports at issue are presumed to be fairly traded. (If this were not the case, the appropriate avenue for relief would be under Title VII as described above.) Thus, were there any evidence demonstrating that underselling exists the allegedly overwhelming underselling by imports presumably would reflect a competitive advantage enjoyed by foreign producers that would manifest itself again when the requested import measures are lifted. This implies when import restrictions are lifted and normal market-driven pricing is restored to the U.S. flange market, the U.S. producers will have to have dramatically reduced their costs in order to compete.

However the adjustment plans submitted by the participating U.S. flange producers show no indication that such dramatic changes are possible, much less likely. In this context, vague claims of "improved efficiency" do not address these supposedly serious issues of cost-cutting. Moreover, there are strong indications that improved "efficiency" in fact means increased capacity, which would tend to aggravate, rather than improve, the domestic industry's predicament by increasing supply. We urge the Committee to give careful consideration to these adjustment plans in order to evaluate whether the objective of revitalizing the domestic industry can be squared with the picture of extreme price competition that has been painted by the same producers.

[31/](#) Schagrin Stainless Comments at.5.

[32/](#) Boltex Comments at 7.

VI. THE DOMESTIC INDUSTRY IS ATTEMPTING TO MISLEAD THE TPSC AS TO THE RELEVANCE OF THE CUSTOMS DECISION

As the European Flange Manufacturers have pointed out, a sizeable proportion of the domestic "industry" that provided data for the Commission's consideration actually consists of companies whose products contain no U.S. steel and which cannot lawfully be marked as "Made in USA" under current interpretations of Customs law. In fact, marking flanges that are finished in the United States from foreign steel as "Made in USA" also likely violates Section 5 of the Federal Trade Commission Act. The Commission's reliance on data and opinions offered by these "converters" was therefore inappropriate and grounds for reversal.

Obviously fearful of the consequences to their claims for relief, representatives of such converters participating in this investigation – for example, Gerlin [33/](#) -- have struggled to muddy the waters on this point. In doing so, however, these companies have misrepresented the law and facts on this issue.

First, Gerlin misstates the Court of International Trade's ("CIT's") position on the Customs Service's earlier attempt to change the rule of origin with regard to flanges and fittings. Contrary to what is implied in their briefs, the CIT never even remotely suggested that the Customs Service had no substantive legal authority to reach the result it has now announced that it is adopting.[34/](#) Nothing could be further from the truth. The CIT's reversal of the original Customs notice was made on procedural not substantive grounds. Thus, while the CIT found that "Customs abused its discretion by relying on a legal conclusion . . . rather than engaging in and providing a reasoned factual analysis . . ." the CIT virtually *invited* Customs to "explain

[33/](#) Weldbend engages in a similar discussion. See Boltex Comments, n.8.

[34/](#) Gerlin argues the CIT to have found that "Customs had overstepped its authority because it contradicted binding judicial precedent." Gerlin Comments at 18.

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with reference to the forgings themselves and the processes performed on them, why no new article with a new name, character and use is created." [35/](#) Far from being prohibited from changing rules subject to judicial precedent, the CIT made clear that Customs is free to reconsider such rules, as long as it provides an appropriate factual and legal rationale. That is, in fact, what it has now done.

Gerlin further seeks to mislead the TPSC by noting that the Commission has previously included converters in its definition of the domestic industry. [36/](#) What their submission fails to tell the TPSC is that the issue of whether converters properly belonged in the domestic industry was not examined in either the preliminary or the final determinations of the cases cited. To the contrary, the only time the issue has been challenged and addressed, the ITC included a partially integrated company in the definition of the domestic industry by virtue of its integrated production. In that case, which concerned butt-weld pipe fittings, the ITC recognized the absurdity of considering finished imported forgings to be "domestic", stating that "{i}n light of the minimal value added to an imported beveled pipe fitting . . . it remains to be decided whether or not {the partially integrated company's} shipments of finished pipe fittings made from such imports should be classified as 'domestic shipments'" [37/](#)

Finally, and even weaker still, Gerlin argues that converters are part of the domestic industry because they are, inter alia, U.S. companies with corporate offices and employees in the United States. [38/](#) By that standard, so is Bebitz U.S.A. – and every other

[35/](#) Boltex Manufacturing Co., L.P. v. United States, 140 F.Supp.2d 1339 at 1348.

[36/](#) Gerlin Comments at 18.

[37/](#) USITC Inv. 731-TA-520 and 521, Pub. 2528 (June 1992), 1992 WL 813827, at 3.

[38/](#) Gerlin Comments at 18-19.

importer whose business will suffer if import restrictions are imposed. If this were the standard, we submit that the ITC would likely not have found injury to the domestic industry to begin with.

VI. CONCLUSION

The comments on Presidential action submitted by the U.S. producers interested in flanges and fittings do nothing to establish a case for relief. To the contrary, they confirm what the European Flange Manufacturers have repeatedly pointed out: flanges having nothing to do with the global steel crisis and should not have been included in this investigation to begin with. To the extent that the domestic flange producers – or the domestic forging converters– are suffering injury by reason of unfairly priced imports, such claims for relief are grounded in Title VII, not Section 201. The European Flange Manufacturers reiterate that no import restrictive relief should be granted with respect to carbon and alloy steel flanges or with respect to stainless steel flanges.

Respectfully submitted,

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